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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE, Plaintiff and Respondent, v. CURTIS REESE III, Defendant and Appellant.	C044758 (Super. Ct. No. SF086660B)

Following the denial of defendant's motion to suppress evidence (Pen. Code, § 1538.5), he pled no contest to possession of cocaine base for sale.

Granted probation, defendant appeals contending the trial court erred in denying his suppression motion because the evidence obtained against him was the product of his being illegally detained. Disagreeing, we shall affirm the judgment.

FACTS

About 10:30 p.m., on November 1, 2002, Stockton Police Officer Stephen Leonesio was using binoculars to observe a group

of persons, including defendant, gathered outside Grays Liquor store. Grays is in a "[h]igh crime, high drug area." Officer Leonesio was accompanied by Officers James Ridenour and Robert Johnson, all of whom were in plainclothes and in unmarked vehicles. Officers Matthew Garlick and Nickolas Nunez were in uniform in a marked police car at a nearby location.

Officer Leonesio watched the group for about 15 minutes during which they were "loitering out there, basic -- no purpose, not going in the store, not buying anything, just hanging out, talking to people as they would drive by or ride by." Officer Leonesio then saw what he believed was a drug transaction -- a female bicyclist handed a female in the group money and the latter gave the bicyclist an item, which the bicyclist put into her mouth. Officer Ridenour, who was in Officer Leonesio's car, radioed Officer Garlick, telling him not to arrest anyone, but "to go in there and get them all for loitering, detain them and cite them if they needed to be cited."

At Grays, Officer Ridenour pointed out defendant to Officer Garlick, telling him "to detain [defendant] for loitering." Officer Garlick drove toward defendant and "turned on [his] lights . . . in order to do the stop." Defendant "took off running" and Officer Garlick turned on his sirens and gave chase. After chasing defendant down an alley and across a westbound street, Officer Garlick, accompanied by Officer Nunez continued the chase on foot, eventually running defendant down, tackling and handcuffing him. Officer Leonesio, who was also

chasing defendant, saw a plastic baggie in defendant's hand and seized it.

DISCUSSION

Defendant contends the cocaine base in the baggie which was seized by Officer Leonesio was the product of his being unlawfully detained, and, therefore, his suppression motion should have been granted. We disagree, finding this case is controlled by *Illinois v. Wardlow* (2000) 528 U.S. 119 [145 L.Ed.2d 570].

In *Wardlow*, uniformed officers were in the last car of a four-car caravan converging on a heavy narcotics trafficking area when they saw Wardlow standing beside a building holding an opaque bag. Wardlow looked in the direction of the officers and fled; they gave chase and caught him. A patsearch of the bag carried by Wardlow disclosed a handgun, which was illegal for Wardlow to possess. (*Illinois v. Wardlow, supra,* 528 U.S. at pp. 121-122 [145 L.Ed.2d at pp. 574-575].) The United States Supreme Court held that Wardlow's presence in a high drug trafficking area, coupled with his unprovoked flight upon noticing the police, provided reasonable suspicion to detain him for investigation. (*Id.* at pp. 124-125 [145 L.Ed.2d at pp. 576-577].)

Defendant first argues that *Wardlow* is distinguishable because defendant's flight was provoked because flight was his only means of avoiding an unlawful detention. The argument is not persuasive.

Even assuming that the officers lacked reasonable cause to detain defendant when they converged at Grays, this avails defendant nothing.[1] An "'officer's uncommunicated state of mind and the individual citizen's subjective belief are irrelevant in assessing whether a seizure triggering Fourth Amendment scrutiny has occurred.'" (*People v. Terrell* (1999) 69 Cal.App.4th 1246, 1254.) When Officer Garlick's police car was approaching defendant, defendant did not know whether Officer Garlick intended to detain him or simply was seeking a consensual encounter. Looking at the facts objectively, defendant fled at the approach of a police car. Thus, for Fourth Amendment purposes, defendant's flight was unprovoked and provided reasonable suspicion for his detention.

Defendant next argues that his flight in these circumstances cannot be converted into reasonable cause to detain him because "[o]therwise, the police could detain anyone at any time. Individuals would either have to submit to the detention or flee, thereby creating reasonable suspicion turning the otherwise illegal detention into a legal detention."

Wardlow again is on point. After noting that Wardlow's unprovoked flight had provided the officers with reasonable suspicion to investigate further, the court observed: "Such a

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[1] Inexplicably, the People assert "[i]n this case, the fact that the officers approached [defendant] in order to talk to him constituted a consensual encounter." The record is clearly to the contrary as shown by the above quoted testimony from the officers set forth in the statement of facts.

holding is entirely consistent with our decision in *Florida v. Royer*, 460 U.S. 491 . . . , where we held that when an officer, without reasonable suspicion or probable cause, approaches an individual, the individual has a right to ignore the police and go about his business. *Id.*, at 498 . . . . And any 'refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure.' *Florida v. Bostick,* 501 U.S. 429, 437 . . . . But unprovoked flight is simply not a mere refusal to cooperate. Flight, by its very nature, is not 'going about one's business'; in fact, it is just the opposite. Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or stay put and remain silent in the face of police questioning." (*Illinois v. Wardlow*, *supra*, 528 U.S. at p. 125 [145 L.Ed.2d at p. 577].) In other words, while a suspect is walking away from an attempted police encounter will not, without more, provide a reasonable suspicion that the suspect may be involved in crime, running will so provide.

Had defendant continued walking away from Officer Garlick as the latter approached him, that conduct could not have been considered in determining whether reasonable cause for detention existed. But defendant did not walk -- he ran. Consequently, pursuant to *Wardlow* and *Royer*, defendant's flight gave rise to a reasonable suspicion to detain him.

We conclude the suppression motion was properly denied.

DISPOSITION

The judgment is affirmed.

ROBIE, J.

We concur:

DAVIS, Acting P.J.

HULL, J.